fastened with the duty not merely to interpret that Act but also to apply the law must give expression to the will of Parliament.

"In a Taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used,"

per Rowlatt J. in *Cape Brandy Syndicate* v. *I.R.C.*,[2] approved by Viscount L.C. in *Canadian Eagle Oil Co.* v. *R.*[3] Or as expressed in *Maxwell's* Interpretation of Statutes, *ibid*, at pp. 4-5:

"The underlying principle is that the meaning and intention of a statute must be collected from the plain and unambiguous expression used therein rather than from any notions which may be entertained by the court as to what is just and expedient.... However unjust, arbitrary or inconvenient the meaning conveyed may be, it must receive its full effect. When once the meaning is plain, it is not the province of a court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words."

We agree, with respect, that there is no ambiguity whatsoever in the words and meaning of section 12A. Under it, the Collector of Stamp Duties has a function to perform which goes beyond a discretionary exercise of his powers. Strictly construed and on a proper interpretation, the section imposes on him the duty to consider whether the consideration in the instrument of transfer, the money value, reflects the proper market value of the object of the transfer at the date of the execution of the transfer. If it does, and not merely because it agrees, which it invariably would, with the consideration of the agreement, then under sub-section (a) and under the proviso to the section, he imposes the relevant duty on this sum. If it does not, that is, if he has reason to believe, as under the proviso, that the consideration mentioned in the transfer does not reflect the proper market value at the date of the execution of the transfer, then he must act under sub-section (b) to impose a duty on what he properly and reasonably considers to be the market-value of the property.

Before concluding, we should, if only out of deference to the arguments of counsel for the appellants, touch on his reference to various judgments and *dicta* that say that a vendor in an agreement of sale upon receipt of the purchase money becomes in equity a trustee for the purchaser: see, *inter alia*, *Peninsular Land Development Sdn. Bhd.* v. *K. Ahmad.*[4] With respect, we find his point somewhat difficult to grasp. Matters between vendors and purchasers are surely entirely different from the question of stamp duty. To use the words in the passages from *Haji Osman bin Abu Bakar* v. *Saiyed Noor bin Saiyed Mohamed*[5] and *Bachan Singh* v. *Mahinder Kaur*,[6] which were quoted and referred to in the judgments of the Federal Court in *K. Ahmad's* case, the right *ad rem* which the purchaser acquires on performing his part of the agreement to purchase, is only as against the vendor and this right becomes a right *in personam* only when he seeks to register his purchase in the Registry of Titles. It is then that the role of the Collector of Stamp Duties is activated. And, in this role, under section 12A, the Collector must impose a duty on a valuation which could be the consideration in the instrument of transfer, if he accepts it as being equivalent to the market value of the property at the time of the execution of the transfer, but if this consideration is, in his opinion, lower than the market value of the property at the time of the execution of the transfer, then on the higher figure of the market value.

For these reasons, we agree with the decision of the High Court and dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *Messrs. Gill & Tang.*

MRS. KOK WEE KIAT v. KUALA LUMPUR STOCK EXCHANGE BERHAD & ORS.

[F.C. (Raja Azlan Shah, Wan Suleiman and Syed Othman F.JJ.) August 9 and September 25, 1978]

[Kuala Lumpur — Federal Court Civil Appeal No. 8 of 1978]

Practice and Procedure — Application that particulars filed in reply to defence be struck out — Particulars — Particulars setting out evidence — Libel — Conspiracy to defame — Whether claim of conspiracy to defame had merged with claim for libel — R.S.C. 1957, O. 19 rr. 22 and 27, O. 25 r. 4.

Torts — Libel — Conspiracy to defame — Whether claim of conspiracy to defame had merged with claim for libel.

This was an appeal from the decision of Abdul Hamid J. reported at [1978] 2 M.L.J. 123. The appellant in this case had claimed damages from the Stock Exchange, the first respondent for breach of contract of service, from second to eighth respondents, who were directors of the Stock Exchange and the ninth respondent its General Manager for damages for conspiracy to defame and lastly against the second to ninth respondents or each of them or alternatively the first respondent damages for libel. The defence of the second to eighth respondents was shortly that the summary termination of the appellant's services was because of her unsatisfactory conduct which was sufficient to warrant her dismissal and that in any event the words contained in the letter of termination of service were not defamatory of the appellant. The ninth respondent said that as an employee of the Stock Exchange he was in no way concerned with the matters complained of by the appellant. The appellant filed a reply and in her reply she filed particulars which ran to 61 pages. On the application of the respondents, the learned trial judge held (1) that as the appellant had unnecessarily set out the evidence in the particulars, the reply should be struck out with leave to put in such other reply as she may be advised; (2) that the claim to "conspire to defame" had merged with the claim for libel and therefore the allegations in the statement of claim referring to the conspiracy to defame should be struck out. The appellant appealed.

Held, dismissing the appeal: (1) the order of the learned trial judge to strike out the reply with leave to file a fresh reply was correct and sufficiently clear as there was a world of difference between giving particulars of facts and matters from which malice is to be inferred and giving evidence by which they are to be proved;

(2) the conspiracy to defame had merged with the libel in this case and therefore the learned judge was right in making the order to strike out allegations in the Statement of Claim referring to the conspiracy to defame.

Cases referred to:-

(1) *Williamson* v. *London & North Western Railway Co.* (1879) 12 Ch. D. 787, 790.

(2) *Ward* v. *Lewis & Ors.* [1955] 1 W.L.R. 9, 11.

FEDERAL COURT.

Wong Weng Kwai for the appellant.

Eugene Lye for all the respondents except 2 & 9.

Ng Ek Teong (*S. Ponniah* with him) for the 9th respondent.

Respondent No. 2 absent.

Cur. Adv. Vult.

Wan Suleiman F.J. (delivering the judgment of the Court): This appeal came up for hearing on the 9th day of August, 1978 when it was dismissed with costs.

Seven of the respondents/defendants had successfully applied in the High Court for the particulars contained in the appellant's reply to be struck out, it also being ordered that appellant (plaintiff in the court below) should also file fresh particulars in compliance with Order 19 rule 22, and on the application of six of them it was also ordered that appellant's allegations in paragraphs 9 & 10 of the statement of claim as to conspiracy and her claim for damages for conspiracy be struck off. The respondents who were represented by counsel were also awarded costs.

This is an appeal against the orders so made.

In her amended statement of claim, the appellant, the Research & Publication Manager of a Stock Exchange claimed damages from the Stock Exchange for breach of contract of service, and from the 2nd to 8th defendants who were Directors of the Exchange, and the 9th defendant, its General Manager for damages for conspiracy to defame, and lastly against 2nd to 9th defendants, or each of them or alternatively against the Exchange damages for libel.

The defence of 2nd to 8th defendants may be briefly summarised thus — that the summarily terminating of her service by the letter of December 18, 1974 was because her recent unsatisfactory conduct which constituted breaches of her contract of service was sufficient to warrant her dismissal, and that in any event the words contained therein were not defamatory of the plaintiff.

The 9th defendant said that being only an employee of the company he was in no way concerned with the matters complained of in her statement of claim, and that even if he was responsible for the letter complained about, such action on his part was privileged and in addition the words complained of were true.

In paragraph 2 of her reply appellant filed particulars which ran into 61 pages, regarding which the learned trial judge had said, "there is no necessity at all to set out evidence which properly should be adduced at the trial".

Mr. Wong for the appellant summarised the three grounds of appeal thus:

(1) was the judge correct in striking out the particulars?,
(2) was he correct in holding that there was a merger of conspiracy and libel?, and
(3) costs.

It was submitted that in filing the particulars appellant was acting pursuant to Order 19 rule 22, which reads:

"Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred: Provided that where in an action for libel or slander the defendant pleads that any of the words or matters complained of are fair comment on a matter of public interest or were published upon a privileged occasion, the plaintiff shall, if he intends to allege that the defendant was actuated by express malice, deliver a reply giving particulars of the facts and matters from which such malice is to be inferred."

The objection to the particulars filed is that it contravenes Order 19 rule 4 (Pleading to contain and contain only material facts but not the evidence by which they are to be proved). He referred to the Grounds of Judgment wherein the learned judge remarked, "It is true that a substantial part of the particulars are matters which may be properly set out but the particulars that are clearly evidence and which strictly should not appear and ought to be struck out seem to occupy a greater portion of those particulars." In a later passage, his Lordship remarked, "Fundamentally she had gone beyond what is required by the proviso of Order 19 rule 22 particularly in the light of rule 4 which provides that only the material facts must be pleaded but not evidence by which they are to be proved." Mr. Wong felt that the judge should merely have expunged the offending parts, and not make the present order.

Counsel referred to a passage in *Williamson* v. *London & North Western Railway Co.*[1] where Hall V.C. said "The striking out is something to be done by the court and it must be specific". But the facts there were different.

In any case the court did agree to order the reply to be struck out with leave to the plaintiff to put in such other reply as she may be advised.

The order of the learned judge in this appeal is with respect correct, and sufficiently clear. There is a world of difference between giving "particulars of facts and matters from which malice is to be inferred", and giving evidence by which they are to be proved.

And now to the question of whether there is a merger between conspiracy to defame and libel, *Clerk & Lindsell* on Torts — 13th Edition at page 817 states "A conspiracy consists ... in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means." The conspiracy in this instance, according to Mr. Wong is one to remove the appellant from her lawful employment.

Referring to the wording of paragraphs 9 & 10 of the statement of claim, he submitted that the judge had failed to consider that some of the parties may be liable for the tort of conspiracy only and others for libel, so that different damages would arise from the same set of facts.

With respect we would say that Mr. Wong is in error. "All persons concerned in the commission of a joint tort are jointly and severally liable for all the damages caused by it" (see *Gatley* on Libel & Slander, 7th Edition page 243 para. 244). Thus the originators of a petition, praying for the removal from office of a public official, are jointly and severally liable with the person who drafted the petition for any defamatory statements contained therein (paragraph 245 of the same volume).

What Denning L.J. said in *Ward* v. *Lewis & Ors.*[2] was most aptly cited in the judgment of the court below. The conspiracy to defame had indeed merged with the claim for libel. Therefore the learned judge was with respect right in making the order tc strike out the allegations in paragraphs 9 & 10 of the statement of claim referring to the conspiracy to defame.

Appeal dismissed.

Solicitors: *Mah-Kok & Din; Eugene Lye & Co.; Ng Ek Teong & Partners.*

TAN SRI TAN HIAN TSIN v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Raja Azlan Shah Ag. C.J. (Malaya), Wan Suleiman, Chang Min Tat and Syed Othman F.JJ.) September 7 and 27, 1978]

[Kuala Lumpur — Federal Court Criminal Appeal No. 51 of 1977]

Criminal Law and Procedure — Criminal breach of trust — Conversion of money to own use for temporary period — Burden on accused — Penal Code, s. 409.

Evidence — Secondary evidence of documents — Burden on accused — Evidence Act, 1950, ss. 63(b) and 65.

Company Law — Director — Declaration of interest — Companies Act, ss. 42(2)(c) and 131.

Penal Code, s. 409 — Criminal breach of trust — Company officers.

This was an appeal against the conviction of the appellant on a charge of criminal breach of trust of the sum of $200,000 belonging to a company, of which the appellant was the Chairman and Managing Director. The cheque had been issued in payment of an alleged debt to a company in Taiwan but it had been paid into the account of a company, of which the appellant and his wife were the only shareholders.

Held, dismissing the appeal: the learned trial judge was justified on the evidence in calling upon the defence and in finding that the appellant had not cast any doubt upon the truth of the prosecution evidence.

Cases referred to:-

(1) *Mat* v. *Public Prosecutor* [1963] M.L.J. 263.

(2) *Mohamed Yatim* v. *Public Prosecutor* [1950] M.L.J. 57.

FEDERAL COURT.

M. Shankar (*G. Sri Ram* and *Paul Chang* with him) for the appellant.

T.S. Sambanthamurthi (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chang Min Tat F.J. (delivering the judgment of the Court): The appellant was convicted of the offence of criminal breach of trust, an offence punishable under section 409 of the Penal Code, in respect of a sum of $200,000 belonging to Folex Industries Berhad, of which he was at the relevant times the chairman and managing director.

The evidence for the prosecution was hotly disputed by the appellant but this much of it is indisputable. On June 24, 1974, a cheque was drawn on Folex's account with the United Malayan Banking Corporation Berhad (UMBC) for $200,000. The drawee on the face of it was Tatung Sydicate (*sic*). The persons who signed the cheque were Ho Wing Kei (Ho), and the accused. Both had authority to sign Folex's cheques. The printed words "or bearer" were cancelled and the cheque was crossed with a stamp impression reading "A/c Payee only." Then by another impression the crossing was cancelled and the cancellation was authorised by the short signatures of Ho and the accused. On the reverse of the cheque, there was a rubber stamp impression bearing the words "Tatung Sydicate" (*sic*), with a signature identified to be that of a Miss Chuah Soo Ha, an employee of Folex. It became for all practical purposes a bearer cheque.

This cheque was paid into the account of Kwong Hing Trading Co. (Kwong Hing) with the Bank of Tokyo on the same day and cleared. Who presented the cheque to the Bank Tokyo was not established. On the same day, Kwong Hing Trading Co. issued a cheque drawn on its account with the Bank of Tokyo for a similar amount in favour of Li Seng Min Co. (M) Sdn. Bhd. (Li Seng Min), of which the accused and his wife were at all relevant times the directors and the only shareholders. Kwong Hing's cheque was in turn presented to the Hongkong and Shanghai Banking Corporation, Kuala Lumpur (HSBC), again it is not certain by whom, for the credit of the account of Li Seng Min. At this moment in time, Li Seng Min's account with HSBC was overdrawn to the extent of $123,369.41 and the accounting effect of the deposit was to change the indebtedness of the accused and his wife to a credit.

The payment was alleged to be in payment of Folex's debt to Hwa Chiang Engineering Co. Ltd. of Taiwan (Hwa Chiang). The prosecution sought to establish that there was either no such entity as Hwa Chiang or if there was, either there was no debt due to it calling for any part payment of $200,000 or no payment was in fact made to it in reduction of such debt. It adduced further evidence to add flesh to the bare bones of the case against the accused.

First, the prosecution adduced evidence of an inspection of the premises of Hwa Chiang at the address shown on its letterheads and produced photographs to show that the premises could not possibly be an engineering workshop or plant. They were indeed those of a flat or small residence. However the scope of the business activities claimed for Hwa Chiang was not so unequivocably stated as to establish a workshop. Hwa Chiang was perhaps only the provider of expertise in the purchase of machinery and did not need a workshop or a factory and moreover, there was evidence of the registration of such a concern according to the laws of Taiwan.

Then the prosecution contended that if there was, there was not, so far as it could discover, any actual business relationship between Folex and Hwa Chiang and there was no satisfactory document to establish this relationship. What the prosecution discovered and recovered from Folex were, firstly, three letters (Exhibit D7A, B & C) bearing the dates January 16, February 4 and April 16 of 1969 conveying the offer to Folex for the construction of a polypropylene weaving plant, a texturised synthetic yarn and knitting plant and a textile finishing cotton/tetoron-cotton plant on terms which excluded the cost of the land and the building or buildings in which the plants were to